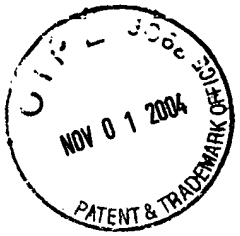


PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:		
Nora Femeina et al.		Examiner: Pierre E. Elisca
Serial No.:	09/711,578	Group Art Unit: 3621
Filed:	November 13, 2000	Docket: 2043.003us1
For:	Automated Cross-Cultural Conflict Management	Customer No. 21186
Assignee:	eBay Inc.	

APPELLANTS' BRIEF ON APPEAL

Mail Stop Appeal Brief--Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This brief is presented in support of the Notice of Appeal filed October 19, 2004, from the final rejection of claims 1-20 of the above-identified application. The Final Office Action from which the Appellants hereby appeals was mailed on April 23, 2004.

A check in the amount of $340.00 to cover the fee for filing the appeal brief set forth in 37 C.F.R. § 41.20(b) is enclosed herewith. Please charge any additional required fees or credit overpayment to Deposit Account 19-0743. Appellants respectfully request reversal of the Examiner's rejection of pending claims 1-20.

1. REAL PARTY IN INTEREST

The real party in interest of the above-captioned patent application is the assignee, eBay Inc., a corporation organized and existing under and by virtue of the laws of the State of Delaware, and having an office and place of business at 2145 Hamilton Avenue, San Jose, CA 95125.

2. RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences known to the Appellants which will have a bearing on the Board's decision in the present appeal.

3. STATUS OF THE CLAIMS

Claims 1-20 are pending in the present application, stand under Final Rejection, and are appealed. Claims 1-20 were rejected under 35 U.S.C. §102(e), as being anticipated by Tavor et al., (U.S. 6,553,347).

4. STATUS OF AMENDMENTS

No amendments are pending, and the status of the pending claims is reflected in the attached Appendix I, listing the claims on appeal.

5. SUMMARY OF CLAIMED SUBJECT MATTER

A dispute regarding a pre-existing agreement is managed by automatically receiving information relating to the dispute from one of an initiator and a respondent (*see, e.g.*,. p. 4, ln. 19 – p. 5, ln. 2), where the initiator and respondent are parties to the pre-existing agreement (*see, e.g.*, p. 4, ln. 6-18). Portions of the information are iteratively provided to the other of the initiator and the respondent in accordance with predetermined criteria relating to either a rating of a portion of the information supplied after a start of the dispute by the initiator or the respondent,

or relating to the number of portions of the information to be provided at an iteration (*see, e.g.*, p. 5, ln. 11-20).

Independent claim 1 recites a method for managing a dispute as described above, and independent claim 11 describes an apparatus for managing a dispute as described above including a computer for automatically receiving the information related to the dispute from one of an initiator and a respondent and for iteratively providing the information to the other of the initiator and the respondent. Independent claims 1 and 11 are further described in the specification such as at p. 2, ln. 6 – p. 3, ln. 2, and by the example methods shown in Figs. 2 and 3, which are described in detail in pages 4, ln. 1 - p. 15, ln. 7.

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

I. Claims 1-20 stand rejected under 35 USC §102(e) as being anticipated by Tavor et al., (U.S. 6,553,347).

7. ARGUMENT

1) The Applicable Law

Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. *In re Dillon* 919 F.2d 688, 16 USPQ 2d 1897, 1908 (Fed. Cir. 1990) (en banc), cert. denied, 500 U.S. 904 (1991). It is not enough, however, that the prior art reference discloses all the claimed elements in isolation. Rather, "[a]nticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*" *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added).

"The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); MPEP § 2131.

2) Discussion of the Rejections

I. Whether Claims 1-20 are unpatentable under 35 USC §102(e) as being anticipated by Tavor et al., (U.S. 6,553,347).

Tavor discusses an automatic virtual negotiation system in which price, terms of sale, and other criteria are considered in negotiating a potential purchase of a product. The claims and specification of Tavor address various functions such as setting an offer price, agreeing to purchase at an offered price, offering a discount incentive, and other such elements of pre-purchase negotiation.

Tavor does not discuss managing or resolving a dispute regarding a preexisting agreement, and Tavor fails to discuss receiving information from parties to a dispute regarding a pre-existing agreement. Tavor further fails to consider iteratively providing portions of information supplied after a start of a dispute where the dispute is about a pre-existing agreement.

In contrast, the independent claims of the present application explicitly recite managing a dispute about a pre-existing agreement, and recite receiving information from at least one of a respondent and initiator who are parties to a pre-existing dispute. No such pre-existing dispute is contemplated in Tavor, and applicant has shown in prosecution that Tavor explicitly requires as a condition of beginning negotiation that a product not have been purchased (*see,* col. 5, ln. 25-30).

Tavor further fails to rate what information it does provide to a party to a potential purchase, and only provides a price that is not itself rated. Although setting a lower price limit may at some point dictate a price presented, the price that is itself presented is not rated, and the

information is not supplied after a start of a dispute regarding a pre-existing agreement and related to the dispute. Tavor similarly fails to provide portions of information based on criteria relating to the number of portions provided at each iteration, as the price is always presented.

Applicant further wishes to bring attention to the Declaration of Mr. Colin Rule, which was filed in support of the Amendment and Response of September 23, 2004. In this document, Mr Rule, who is the Director of Online Dispute Resolution for eBay Inc., explains in great detail how the techniques and methods used for pre-sale negotiation are in many ways very different from those used to resolve a post-agreement dispute. Among the chief distinctions mentioned are the relative equality of power or bargaining position of parties in a pre-sale environment, as either party can break off the deal and purchase or sell elsewhere at any point with relatively little disincentive. In contrast, the seller of a item typically has much greater power than a buyer once a sale or other agreement is reached, making negotiation between the two parties substantially different.

Also, in a pre-sale negotiation, both parties are likely seeking to define deal terms with another party with whom they lack emotional problems or bad feelings, and so are not concerned with management of emotional issues. Tavor simply seeks to offer price reductions or other incentives to secure a sale, and does not contemplate managing the emotional position of a buyer or other party post-transaction.

Finally, the pending independent claims recite management of a dispute, whereas no such neutral third party mediation or arbitration function is typically present in a buying negotiation. More specifically, even though a buyer and seller may employ agents, each party in pre-sale negotiation is acting on behalf of one side or the other, whereas in dispute resolution a neutral third party is often employed to facilitate resolution of the dispute.

Because Tavor fails to consider managing or resolving a dispute regarding a preexisting agreement, receiving information from parties to a dispute regarding a pre-existing agreement, or iteratively providing portions of information supplied after a start of a dispute where the dispute

is about a pre-existing agreement, and because Tavor seeks to solve a fundamentally different problem in a different way than is the subject of the pending claims, reversal of the rejection of claims 1-20 is respectfully requested.

8. SUMMARY

Appellants believe the claims are in condition for allowance and request withdrawal of the rejections to the pending claims. It is respectfully submitted that the cited art neither anticipates nor renders the claimed invention obvious and that the claimed invention is therefore patentably distinct from the cited art. It is respectfully submitted that claims 1-20 should therefore be allowed, and reversal of the Examiner's rejections of pending claims 1-20 is respectfully requested.

Respectfully submitted,

NORA FEMENIA

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 349-9581

Date Oct 27 04 By _____
John M. Dahl
Reg. No. 44,639

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Appeal Brief--Patents, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 27 day of October, 2004.

Peter Rebuffoni
Name

_____
Signature

APPENDIX I

The Pending Claims on Appeal

1. (Previously Presented) A method of managing a dispute about a pre-existing agreement, comprising:

automatically receiving information relating to the dispute from one of an initiator and a respondent, the initiator and the respondent being parties to the agreement, and

iteratively providing portions of the information to the other of the initiator and the respondent in accordance with predetermined criteria relating to either a rating of a portion of the information supplied after a start of the dispute by the initiator or the respondent, or relating to the number of portions of the information to be provided at an iteration.

2. (Original) The method of claim 1, further comprising automatically retrieving information relating to the community of the other of the initiator and the respondent.

3. (Original) The method of claim 1, wherein the received information includes at least one factor and an evaluation of the desirability or cost of the factor.

4. (Original) The method of claim 3, wherein the at least one factor includes at least two of historical harm, future harm, an incentive, a punishment, a request, an offer, and a desired outcome.

5. (Original) The method of claim 1, further comprising iteratively receiving factors relating to the dispute from the other of the initiator and the respondent.

6. (Original) The method of claim 1, further comprising iteratively receiving evaluations of the desirability or cost of the portions of iteratively provided information from the other of the

initiator and the respondent.

7. (Original) The method of claim 1, further comprising automatically proposing an agreement to resolve the dispute based on the received information.

8. (Original) The method of claim 7, wherein the agreement is automatically proposed in accordance with factors relating to the dispute received from the other of the initiator and the respondent.

9. (Original) The method of claim 8, wherein the agreement is automatically proposed in accordance with an evaluation of desirability from the initiator or the respondent and an evaluation of cost from the other of the initiator or the respondent, the evaluations being associated with the same portion of the dispute related information or the same dispute related factor.

10. (Original) The method of claim 1, further comprising automatically providing advice to the other of the initiator and the respondent based on iteratively provided information.

11. (Previously Presented) An apparatus for managing a dispute about a pre-existing agreement, comprising:

a computer for automatically receiving information relating to the dispute from one of an initiator and a respondent, the initiator and the respondent being parties to the agreement, and for iteratively providing portions of the information to the other of the initiator and the respondent in accordance with predetermined criteria relating to either a rating of a portion of the information supplied after a start of the dispute by the initiator or the respondent, or relating to the number of portions of the information to be provided at an iteration.

12. (Original) The apparatus of claim 11, wherein the computer is also for automatically retrieving information relating to the community of the other of the initiator and the respondent.

13. (Original) The apparatus of claim 11, wherein the received information includes at least one factor and an evaluation of the desirability or cost of the factor.

14. (Original) The apparatus of claim 13, wherein the at least one factor includes at least two of historical harm, future harm, an incentive, a punishment, a request, an offer, and a desired outcome.

15. (Original) The apparatus of claim 11, wherein the computer is also for iteratively receiving factors relating to the dispute from the other of the initiator and the respondent.

16. (Original) The apparatus of claim 11, wherein the computer is also for iteratively receiving evaluations of the desirability or cost of the portions of iteratively provided information from the other of the initiator and the respondent.

17. (Original) The apparatus of claim 11, wherein the computer is also for automatically proposing an agreement to resolve the dispute based on the received information.

18. (Original) The apparatus of claim 17, wherein the agreement is automatically proposed in accordance with factors relating to the dispute received from the other of the initiator and the respondent.

19. (Original) The apparatus of claim 18, wherein the agreement is automatically proposed in

accordance with an evaluation of desirability from the initiator or the respondent and an evaluation of cost from the other of the initiator or the respondent, the evaluations being associated with the same portion of the dispute related information or the same dispute related factor.

20. (Original) The apparatus of claim 11, wherein the computer is also for automatically providing advice to the other of the initiator and the respondent based on iteratively provided information.

APPENDIX II

Declaration of Mr. Colin Rule (See Attached)

PATENT
BRENDA 8

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s)	:	Nora FEMENIA et al.	Application: 09/711,578
Filed	:	November 13, 2000	Confirmation: 7170
Examiner	:	Pierre E. ELISCA	Group Art Unit: 3621
For	:	AUTOMATED CROSS-CULTURAL CONFLICT MANAGEMENT	

DECLARATION OF COLIN RULE

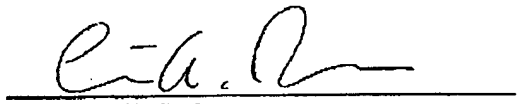
1. I am Director of Online Dispute Resolution for ebay. My work address is 2211 N. First Street, San Jose, CA 95124. My email address is crule@ebay.com.
2. I have worked in the dispute resolution field for more than a decade as a mediator, trainer and consultant. I am a Fellow at the Center for Information Technology and Dispute Resolution at UMass-Amherst. I hold a Master's degree from Harvard University's Kennedy School of Government in conflict resolution and technology, a B.A. in Peace Studies from Haverford College, and have completed advanced coursework in dispute resolution at the University of Massachusetts-Boston.
3. I co-founded Online Resolution, an online dispute resolution provider, in 1999 and served as its CEO (2000) and President. In 2002, I co-founded the Online Public Disputes Project, which applied ODR to multiparty, public disputes. Previously, I was General Manager of Mediate.com, the largest online resource for the dispute resolution field.
4. I have presented and trained throughout Europe and North America for organizations including the Federal Mediation and Conciliation Service, the Department of State, the International Chamber of Commerce, and the Center for Public Resources. I have lectured and taught at UMass-Amherst, Bentley College, MIT, Southern Methodist University, the University of Ottawa, Lasell College, and Brandeis University. I am the author of *Online Dispute Resolution for Business*, published by Jossey-Bass in September 2002. I have contributed more than 30 articles to prestigious ADR publications such as *Consensus, The Fourth R, ACR News*, and *Peace Review*. I am skilled in the art of dispute resolution.

5. I have reviewed U.S. Patent No. 6,553,347 (Tavor), Automatic Virtual Negotiation. This reference describes a system that automatically price haggles with a user in an attempt to arrive at a purchase agreement.
6. In my opinion, techniques used for pre-sale negotiation are not relevant to techniques used for conflict management, for at least the following reasons:
    a. different powers – in a pre-sale negotiation, the buyer can always decline to purchase, so this gives the buyer and the seller a rough power equality, as they can both unilaterally decide not to take part. In contrast, after a sale occurs and a dispute arises, the buyer usually has relatively little power while the seller has relatively great power. Negotiations where the parties have equal power are substantively different than negotiations where the parties have unequal power.
    b. different objectives – in a pre-sale negotiation, the objective is to arrive at a purchase agreement. In contrast, in a post-sale dispute, the objective is to deal with the dissatisfaction of one party. Pre-sale negotiating processes are significantly different from direct communication processes intended to address customer dissatisfaction.
    c. different emotional issues – in a pre-sale negotiation, the parties are concerned with defining deal terms, whereas in dispute resolution, emotional communication and problem resolution are major components of the process. Since pre-sale negotiation is mainly devoid of emotional communications, techniques for pre-sale negotiation are largely irrelevant to dispute resolution techniques focusing on emotional communication and problem resolution. In particular, Tavor's system merely offers price reductions or other benefits to secure a sale (column 4, lines 25-35) and is silent as to explicitly managing the buyer's emotions.
    d. different players – in a pre-sale negotiation, the involved parties are the buyer and seller and possibly their agents. In contrast, in dispute resolution, there is usually a third party, referred to as a mediator or arbitrator or negotiation assistant depending on their particular function, who is neutral relative to the parties having the dispute and the subject of the conflict. The dispute resolver plays a role much different than the parties in a pre-sale negotiation, so pre-sale negotiating techniques are not relevant to the dispute resolver.

7. In my opinion, one of ordinary skill in the art of dispute resolution seeking to automate the dispute resolution process would not be motivated to look to Tavor, which relates to a system for pre-sale price haggling, for at least the reasons discussed above.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Title 18 of the United States Code, Section 1001, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

9/22/04
Date


Colin Rule